

**641—85.7(135) Panel determination of need for surrogate decision making.** The panel's determination of the patient's need for surrogate decision making shall be made in accordance with the following provisions:

**85.7(1)** The panel shall decide based upon a preponderance of evidence whether the patient is in need of surrogate decision making by determining that the patient: lacks the ability to consent to or refuse the proposed medical care and does not have an attorney-in-fact, guardian, spouse, adult child, parent, or an adult sibling who is reasonably available, willing and able to make such a decision.

The method of determining patient's capability to consent to or refuse care shall include examination of patient by a licensed physician with a written report to the local board.

When practical, the panel members shall personally interview and observe the patient as a part of the hearing. If a personal appearance by the patient before the panel is not practical, then either the panel chairperson shall designate a member of the panel to interview and observe the patient prior to the hearing or the panel shall require one of the following:

1. Written report of examination by psychiatrist.
2. Written report of examination by psychologist.
3. Written report of examination by physician not involved in case.
4. Written report from a department of human services investigator involved with patient.
5. Written report from long-term care case management project.

**85.7(2)** In making the determination of whether the patient lacks the capacity to consent to or refuse the proposed medical care, the panel or board shall consider whether the patient is unable to adequately understand and appreciate the nature and consequences of the proposed medical care.

**85.7(3)** A majority of the panel members must vote in the affirmative that the patient is in need of surrogate decision making or the patient will be deemed not to need surrogate decision making.

**85.7(4)** A panel determination that a patient is in need of surrogate decision making shall not be construed or deemed to be a legal determination that such person is incompetent.

**85.7(5)** In the event the panel or board has determined the patient to be capable of decision making, then the patient's consent to or refusal of such treatment, if given, shall constitute valid consent or refusal. No other consent shall be required by a provider of health services.